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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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MIDDLESEX COUNTY RETIREMENT SYSTEM,

Plaintiff,

v. 07 CV 2237

MONSTER WORLDWIDE, et al,

Defendants.

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New York, N.Y.
June 14, 2007
5:18 p.m.

Before:

HON. JED S. RAKOFF,

District Judge

APPEARANCES

LABATON SUCHAROW & RUDOFF, LLP
Attorneys for Plaintiff
BY: CHRISTOPHER KELLER, ESQ.

MANATT, PHELPS & PHILLIPS, LLP
Attorneys for Defendant Andrew McEelvey
BY: ANDREW DeVORE, ESQ.

DECHERT, LLP
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Attorneys for Defendant, Worldwide, Inc.
JONATHAN GARDENER, ESQ.

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(Case called)
THE COURT: Good afternoon.
Thank you very much. We have two motions.
The first is a motion of Defendant McEelvey to dismiss.
I guess my first question for counsel for Mr. McEelvey, is could a reasonable juror infer for these limited purposes, intent from the alleged refusal of Mr. McEelvey to submit to an interview with the special committee of the board.
MR. DeVORE: No, your Honor, I don't think they could.
THE COURT: Why not?
MR. DeVORE: Plaintiff's papers refer to a letter

submitted by counsel in connection with Mr. McEelvey's decision not to appear for that interview. That letter states, because it is, I believe, part of the record, that new counsel had just come in on behalf of Mr. McEelvey, sought time to review the record, got comfortable with the facts, and I would submit your Honor that it was a prudent exercise of their judgement on behalf of Mr. McEelvey.

THE COURT: Well, since I dismissed, one of the questions is going to be -- one of the questions, whether it is going to seek leave to replead. Has he submitted such an interview since then?

MR. DeVORE: He has not, your Honor.

THE COURT: So, why is it that -- why, assuming that were to be alleged in a replead, complaint, why isn't that a basis for a negative inference?

MR. DeVORE: Your Honor, I don't -- I don't believe that even the absolute refusal to submit to an interview would be sufficient to provide for that inference. I don't believe, given where we are, in these NB and 28 claims and the heightened pleading requirement for strong inference of fraudulent intent here, that whatever inference one might draw, a reasonable juror might draw from the refusal to appear in an interview, is enough, in fact far from enough, to satisfy that standard.

THE COURT: That may not be enough in and of itself, but you're not saying, are you, that it couldn't be the basis of a negative inference of -- you know, before lawful intent, are you?

THE WITNESS: Well, your Honor, clearly it is something short of exercising one's Fifth Amendment rights.

THE COURT: And if he did exercise his Fifth Amendment rights, then in a civil litigation you can infer negative intent from that?

MR. DeVORE: That's certainly true, your Honor. Although that is not what happened here. As a matter of fact, what their letter said, is that --

THE COURT: I know. You told me what the letter said.

But when was that letter dated?

MR. DeVORE: It was the middle of November of 2006.

THE COURT: And are you saying, are you representing that the special committee has not sought his appearance since then?

MR. DeVORE: Your Honor, I would -- before I make any representations to the Court, I would like to be able to reconstruct the course of events. I don't think we have revisited that issue with the special committee, but I'm not saying that they have asked and that he has refused, or -- I -- I just don't -- I would like to be able to look back on the course of communications on that issue.

THE COURT: All right. Well, let's assume, for sake of argument, that plaintiffs would be in a position to allege that the special committee, after waiting some time for counsel to get up to speed, made a renewed request or reasonably expected counsel to, on their own, get back to them saying we're ready now. And that they were then put off once again.

Why shouldn't -- I mean this is really, in some cases -- and I'm now taking most favorably the plaintiff, of course, as I'm required to do for purposes of these motions -- of this motion -- you know, why couldn't a reasonable factfinder say, gee, the Chairman and founder of the company of the -- the centerpiece of the company, if ever there was one, is ducking talking to the special audit committee about the very matter

that was the subject of, not just this lawsuit, but numerous inquiries by various authorities. Why else would he be doing that if he were not possessed of guilty knowledge or intent. Why isn't that a perfectly reasonable inference for a jury to draw?

MR. DeVORE: Your Honor, I -- I would submit that -- that acting on the advice of counsel, there could well be other reasons to counsel an individual not to appear in those circumstances. Particularly --

THE COURT: No. If you want to waive attorney/client privilege and have a discussion about that, I suppose I could look at that. But that is what you would have to do if -- if you were raising that claim at trial. And the -- you can't -- you can't have it both ways. You can't say, ladies and gentlemen of the jury, although this looks awfully strange, we represent to you that there could be, theoretically, some neutral reasons why counsel might be advising him not to submit to an interview by the special committee, but we just want you to speculate about that, we're not going to actually waive attorney/client privilege and tell you what the advice was and what he said in soliciting that advice.

That is not a permissible approach. And I'm not saying that it is any more permissible at this stage.

MR. DeVORE: No, your Honor, I don't -- that approach -- the point I'm trying to make is what we have here,

based on the allegations, and I think based even on potential allegations that plaintiffs could make based on the facts, is that, at that time, Mr. McEelvey did not submit to be interviewed. That is not the same thing, obviously, as the invocation of his Fifth Amendment Privilege in that context, and that, given the context, that we're in the heightened pleading requirements.

THE COURT: I agree with you. That it is less than the invocation of the Fifth Amendment in terms of the inference that it gives rise to. And I agree with you that the inference that it does give rise to, by itself, is not sufficient to carry plaintiff's burden.

But I am not yet convinced that such an inference won't be warranted and, therefore, would be part of the mix.

Now, there well may be, but they don't have enough in addition to meet the burden that they have to meet.

MR. DeVORE: Your Honor, I would submit that they don't. And if I could take a step back and look at that issue for a minute, I think what we have here is really an absence of any specific allegations as to Mr. McEelvey that could possibly satisfy the heightened pleading requirement here.

And the -- the -- what -- instead, what we have is -- is a theory built on these series of pieces, including Mr.

Olsnyckyj, the former general counsel's, guilty plea, and some statements by the company in connection with the statement, the

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size of the statement itself, and the fact that there are GAP violations, the fact that Mr. McEelvey signed certain documents. And the fact that he was a CEO of the company. And what is happening, the plaintiffs are trying to take those pieces and substitute that for some particularized allegations as to this individual defendant, which they have not pled in their papers, and have that satisfy the standard. And I think the law is pretty clear that that is not enough.

THE COURT: Well, let me --

MR. DeVORE: One thing --

THE COURT: Let's find out. Let's talk to your adversary, and we'll come back to you in a minute.

MR. DeVORE: If I may, a hypothetical, your Honor.

THE COURT: We'll come back to you in a minute.

MR. DeVORE: Thanks very much.

THE COURT: So what do we have in the way of -- putting aside whatever weight might be given to that inference that I just mentioned, the -- Mr. McEelvey, as I understand it, didn't have any options that were implicated by this scheme, the -- what -- you know, you seem to be asserting in your complaint, in effect, well, he was the top dog, so he must be guilty. That clearly is not the law.

MR. GARDENER: It is more than just being a top dog, although that is part of the process.

THE COURT: Why? Why is it relevant at all?

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MR. GARDENER: Because it puts him, as the founder and long time CEO and Chairman of the Board, in a position to have access and to, in fact, have information that would lead him to know or be reckless in not knowing that his public statements were inaccurate.

THE COURT: Oh, that -- that is -- that sounds to me -- forgive me for putting it this way, totally unrealistic.

MR. GARDENER: Well, I have specifics, your Honor.

THE COURT: Well I'm hoping you will give me some, because what you just said, which is, in effect, because someone is the CEO, you can infer that they know every kind of substantial misconduct that others are perpetrating because they, in theory, would have access to it, is just so totally contrary to common sense that it defies, that it boggles the mind. Precisely because he is the CEO, he has a million things going on at any given time. And he is not a guarantor of his subordinate's conduct. Not if you want individual liability, so --

MR. GARDENER: Let me provide you with the specifics.

The complaint alleges, among other things, that Mr. McEelvey was intimately involved in the stock option process. He was involved in determining who got stock options. And when the stock options were granted, his --

THE COURT: Yeah, but that -- that would be -- that -- that would be perfectly innocent, unless he knew or had reason

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to know to a reckless disregard level, of the backdating.
MR. GARDENER: Yes, I -- I agree with that.
THE COURT: Yeah.
MR. GARDENER: And I think if you follow through the facts as we know them and we allege them, that that strong inference can be made against him in this case.
THE COURT: Right. So he is involved in the -- as far as -- as far as you have said so far, he is involved in the determination that the stock options will be granted and other aspects of that. Not exactly anything that would differentiate him from a CEO, and a completely honest stock option plan. So what else do you have?
MR. GARDENER: He has admitted in a Wall Street Journal article that we quote that he, in fact, created a list of executives that would receive stock options. And he would send that to the compensation committee for approval.
THE COURT: Yeah.
MR. GARDENER: In this case --
THE COURT: Like any other CEO, he plays a big role in determining compensation. And stock options are a classic form of compensation.
MR. GARDENER: But the difference is, in this case because there was backdating, because the date that the stock options were in fact granted comes much later than the date that the compensation committee is alleged to have approved

them, he would have all of that information in his possession. He would --
THE COURT: No, that's what I -- that what I -- what do you mean by that. Do you mean that --
MR. GARDENER: I mean --
THE COURT: Do you mean that there is any evidence that he actually looked at that?
MR. GARDENER: Well, there is.
THE COURT: Because again any CEO is going to have a thousand documents passing through, not to mention e-mails, passing, you know, through his desk, and through his office, you know, on any given day. What is the evidence that he focused on this?
MR. GARDENER: The best piece of evidence we have is not in the complaint at the moment, your Honor. And I mentioned this in the context of if we were to get to the end of this discussion, and we would be asking -- and it doesn't -- you are not convinced we have, at this point, a strong inference of scienter against Mr. McEelvey, we would be asking for the right to amend the complaint.
THE COURT: All right. So tell me about it.
MR. GARDENER: We have gotten, now, possession of the documents that the company has provided to the SEC. And among those documents -- and I can hand up a copy of the one document that I have pulled out to -- to demonstrate his involvement --

is a document in which Mr. McEelvey signed a unanimous written consent for a stock option that was, in fact, alleged to be backdated. And I would say that Monster has now admitted the fact --

THE COURT: Do you have a copy for your adversary?
MR. GARDENER: Yes.
If I may, your Honor.
THE COURT: Yes. Just hand it to my clerk.
Hang on a minute. I want to take a quick look at this.
And what date do you say this was -- this unanimous written consent was actually executed?
MR. GARDENER: We believe that this unanimous written consent was actually executed in or about April of 2000.
THE COURT: And what would be your evidence on that?
MR. DeVORE: The evidence, among other things, is contained in the criminal information against the former general counsel which is attached, which is cited in the complaint and attached to the Posa affidavit as exhibit 3.
THE COURT: So let me go back to your adversary.
Assuming that a there is a basis upon which a reasonable factfinder could infer that this document was executed in April of 2000, why isn't it, on its face, not an example of the very backdating that was at the heart of the underlying misconduct, and why isn't your client's signature on

this rather short and fairly self-evident document not evidence of his intent.
MR. DeVORE: Your Honor, there are a number of reasons. But I think the most important is the plaintiffs have made a lot of Mr. Olsnyckyj's --
THE COURT: Before you get to that, just let me -- let me assume for the moment, and then we'll get to see whether they have an adequate proof on it. Assume for the moment that this document was executed in April of 2000. If that assumption were true and could be adequately pled, assume that, is not then -- does it not follow that this document, by itself, is a smoking gun?
MR. DeVORE: No, your Honor, it doesn't.
THE COURT: Why not?
MR. DeVORE: For two reasons:
First, if I might with regard to information, what the information makes clear, although the plaintiffs have not focused on it, is that this -- the alleged deception, the deception to which Mr. Olsnyckyj pled guilty was maintained by what -- what is said in the information and in his allocution, by persons. But what it also says is that the board of directors of the company, of which Mr. McEelvey was the share were deceived by Mr. Olsnyckyj and whoever else was included within the persons, he was deceived.
THE COURT: That is different from the CEO. I mean

the -- just so the record is clear, what we have here is about as classic a case of backdating as one could imagine, assuming again for sake of argument that this was actually executed in April of 2000. And it gives, even on its face, a suggestion of backdating. Because no -- it, nowhere, contains the actual date on which it was executed. But it is careful to state everywhere that the various members of the board have set forth their signatures "as of the first day December, 1999." A suspicious wording in and of itself. It is the wording that

classically is used from time and memorial for backdating the cases under the securities laws in the very district in which that kind of wording is, itself, a red flag of backdating are legion.

Then, you know, then you say, well, why were they backdating it. It is because in the very first paragraph it says: Resolved that in accordance with the 1999 long-term incentive plan, the Committee, which is the compensation committee of the board, has determined the fair market value of each share of common stock of the corporation on the date hereof, to be $95 per share. The closing price per share of the common stock of the corporation on the Nasdaq national market to date hereof.

In other words, if we backdate it to then, we know what the share price was on that date, and it is going to provide a purchase price for the misconduct we wish to

implement through this backdating.

I mean if, in fact, this document was executed in April 2000, it is hard to imagine a document that, taken most favorably to plaintiff, would be any better at giving rise to a strong inference of fraud.

MR. DeVORE: Your Honor, a couple of points.

THE COURT: Uh-huh.

MR. DeVORE: I recognize what the cases say about the "as of" language. Although, I would submit that that is, is something that has developed more recently than 1999. As the backdating cases have come to light, people have --

THE COURT: I think -- I bring to your attention, the largest securities fraud prosecuted in the 1970s, which is the National Student Marketing, a fairly famous case that led to both criminal and civil cases. That was a case with Justice Compact.

MR. DeVORE: Secondly, the information makes clear that the board of directors were deceived, that the outside auditors, Seideman, were deceived, and that the lawyers were deceived. In fact, as is clear in the various signature pages here, it is not just Mr. McEelvey who signed, but other members of the board, as well.

THE COURT: What do you think they were deceived about?

MR. DeVORE: Well --

THE COURT: They had to know when they signed it that they were not signing it on December 1, 1999.

MR. DeVORE: Your Honor, I would submit, based on the allegations in the complaint, they were deceived with regard to whether there was any intentional misconduct at issue in connection with this grant of options or their signing of this unanimous written consent. And that that is critically important for purposes of whether the plaintiffs --

THE COURT: Well, that sounds like a classic jury issue, not a complaint issue.

In other words, what you are saying is, for all we know, the general counsel, the company, said to them, oh, this is fine, I have checked it out, the law allows this. And, therefore, arguably, there couldn't be any fraudulent intent on

their part. You might have an especially good argument there with respect to someone who, himself, didn't hold any options. Although, as CEO, he had an obvious motive to incentivize his high-level employees. But maybe something like that was said. All we know, assuming the complaint were it amended to include this and assuming it said it was actually executed in April, is that, on its face, it is extraordinarily problematic.

MR. DeVORE: Your Honor, what I'm saying is that even amended to include this, the allegations in the complaint, in my analysis, doesn't satisfy the standard that -- the heightened pleadings standard here, that what the allegations

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consist of, even with this, is that Mr. Olsnyckyj pled guilty, and that the board was deceived, that the outside auditors were deceived, that the lawyers were deceived, and there is no allegation, even with this document, that suggests that Mr. McEelvey was within the group doing the deceiving, as opposed to member of the board or others there who were deceived. And I --

THE COURT: Your adversary has already made mention that Mr. McEelvey was involved in determining stock options, yes?

MR. DeVORE: Yes.

THE COURT: So, he is, as near as I can tell from the allegations in the complaint, the honcho of this company. He wants to increase the compensation of the executives that he thinks are doing a good job. He plays a role as any CEO, perfectly legitimately, would in making that determination. And -- but, then, say your adversary, he goes the further step and goes along with a backdating scheme. I think that distinguishes him clearly from the other members of the board. Moreover, I don't know that plaintiff is in any way, shape, or form bound by what is alleged in some other instrument. They are relying on it, solely -- as near as I can tell from purposes of discussion -- for date, not for loss.

MR. DeVORE: Your Honor, I don't mean to suggest they are bound. I mean to say that that is among the allegations

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that are in the complaint. And it suggests, pretty clearly, that this significant group of people, including the professionals charged with administering what would -- one would think for a significant public company would be a program of options that complies with the laws and program of accounting for those options that -- in a way that complies with accounting and legal obligations were deceived. And there is nothing in this document that I can see, your Honor, that suggests that it -- the CEO of the company wasn't in a position to rely, reasonably, on the work of those professionals in assuring that the program satisfied all of those obligations.

THE COURT: Let me cut this short. I have doubts -- though I'm making no conclusions at this point but I have serious doubt -- as to whether the complaint as presently pled meets the legal requirements. But it would be normal, even if I were to dismiss the complaint, to give leave to replead if there was even the reasonable suggestion that plaintiffs could come forward with other information that would change the

equation.
In effect, even under the Reform Act, plaintiffs, absent failure to show that they have come up with anything more that is material, are given two bites at the apple. More than two. So what I suggest, is the following:
I think rather than my deciding this motion now, it

ought to be postponed for or withdrawn without prejudice.
Plaintiffs should draft a new complaint, amended complaint. Because I'm not dismissing anything. But with the understanding that if the new complaint doesn't meet the standards, they are not going to get another shot.
So, this is the -- this amended complaint will be their second bite at the apple, in effect. And, then, we would then -- then you could renew your motion. Or, if you want to withdraw it and put in new papers -- whichever is easier for you, I don't care -- you would have to address whatever the new allegations are, in any event.
I think that is the way to proceed, because the -- I mean it would be, at best, a close call to sustain the complaint in its present form.
But this does, at first blush, look like a very powerful piece of additional evidence. So, the suggestion as -- that's all it is at this point, until I hear from counsel as to whether they consent or not -- the suggestion is that defense counsel either withdraw its motions without prejudice or hold it in abeyance -- I don't care which way you want to characterize it -- that plaintiffs then amend their complaint to reflect this document and anything else that they think will add to and address the issues that have now been briefed, and that they do so, however, on the understanding that any motion that is then -- any motion to dismiss that is then directed at

that amended pleading, will, if granted, be a dismissal with prejudice.
So that is -- that is my suggestion.
Does plaintiff's counsel consent?
MR. GARDENER: We would.
THE COURT: Or would you prefer me to dismiss your claims now.
MR. GARDENER: Hobson's choice.
THE COURT: I'm throwing that out. I am not saying I would do that, but I might do that.
MR. GARDENER: Let me preface my comments with --
THE COURT: I might do it in the next five minutes, but I don't know.
MR. DeVORE: I do think there are a multitude of other allegations in the present complaint that we have not spoken about --
THE COURT: And I would certainly hear you.
MR. GARDENER: -- having --
THE COURT: -- tonight, but I'm not going to waste my time doing that unless you are going do live and die by that result.
MR. GARDENER: Having said that, we would consent to preparing and filing amended complaint with respect to McEelvey, your Honor, only, since --

THE COURT: That's all we're concerned about is

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McEelvey.

MR. GARDENER: The only other caveat, or comments, I would just like to put on the record --

THE COURT: Uh-huh.

MR. GARDENER: -- is that I understand your Honor's admonition about this being our second bite at the apple with respect to McEelvey. I would just say that this -- this amended complaint, since it is directed to McEelvey, would not prejudice our rights to --

THE COURT: Totally correct. Totally correct. All my prior comments are limited to the McEelvey aspect.

MR. GARDENER: With that understanding, your Honor, we would consent to that procedure.

THE COURT: Very good.

How quick -- before I turn to defense counsel -- how quickly can you get that?

MR. GARDENER: Well, given my -- I was sitting in the audience while you went through the process of gauging time for counsel on trial. I would -- let me just say we -- we do have --

THE COURT: You want to prepare this by 9:05 tomorrow?

MR. GARDENER: No, your Honor. We started looking, a week ago, at the production we got from Monster, which involves a million, 200,000 pages of documents. This one piece is one thing that we happened to find in a week's time. We would like

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to amend once with respect to McEelvey. In fact, we have won right to amend, as your Honor indicated. So we would like to incorporate everything that we possibly can in there that we might find in the production.

THE COURT: That's fair enough. But how long do you want?

MR. GARDENER: I would say we would -- I think 30 days would be more than enough time.

MR. KELLER: I agree.

THE COURT: More than enough. But how about three weeks.

MR. GARDENER: Three weeks, your Honor.

THE COURT: All right, very good. So that would be -- today is the 14th, so that would be -- oh, you are in luck. That would be July 5. I'm not going to do that to you. Say July 9?

MR. GARDENER: Thank you, your Honor.

THE COURT: All right.

Now, let me make sure that the other side is in agreement to this procedure. And let me find out whether you would prefer -- doesn't matter to me -- whether you want to just treat your motion in abeyance and file supplemental papers, or you treat your -- you withdraw your motion without prejudice and just file a new motion; either one is fine.

MR. DeVORE: Your Honor, if I had any reasonable hope

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of convincing the Court that it should rule on the motion in this complaint and dismiss with prejudice, I would try. I don't think I do, so I'm not going to do that.

THE COURT: You're a very prudent man.

MR. DeVORE: So I would consent, notwithstanding my view that even with this document the plaintiffs cannot make a standard here --

THE COURT: Very good. All right. Which way do you want to go in terms of --

MR. DeVORE: I think if it doesn't make a difference to the Court, probably I would ask for leave to file a new motion.

THE COURT: I think that, frankly, makes it simpler. Okay, so the new amended -- the new, and as to McEelvey, finally amended, complaint will be on July 9.

And how long does defense counsel want for any motion you intend to bring?

MR. DeVORE: Two weeks, your Honor.

THE COURT: Two weeks is fine. That is July 23rd. Answering papers, two weeks?

MR. GARDENER: Two weeks.

THE COURT: August 6. Reply papers, August 13. And we'll hear argument on August 20th at 4:00 p.m.

All right. Very good.

Now, let's turn to the motion to appoint lead counsel.

What -- I didn't get a chance to really go through all of the stuff here. Was proper notice given and all like that?

MR. KELLER: Your Honor, it was. All of the -- the requirements of the PSR were met. The notice was given over the news wires, was picked up on Bloomberg and the internet.

THE COURT: Did you receive, or do you have knowledge of anyone who is seeking to be lead counsel, other than your own firm?

MR. KELLER: I do not, your Honor.

THE COURT: Okay. What is -- what are your financial arrangements?

MR. KELLER: In terms of?

THE COURT: In terms of the present. Have you -- do you have a contingent fee arrangement with the Middlesex County Retirement System?

MR. KELLER: Your Honor, we have written fee agreements with both of our clients which require that prior to submission to your Honor, that we may review what has gone on in the case, the results achieved, and their approval -- prior to submission -- of any fee request.

THE COURT: Does it set any goals or any limits?

MR. KELLER: I believe the limit is no more than 25 percent.

THE COURT: And does it say anything about things as travel, like coach fair versus first class; that kind of stuff?

MR. KELLER: It does not at that sort of gradual level, but --

THE COURT: Be apprised that this Court will look at that stuff, whether your client does or not. I have had the most extraordinary situation in a class action about six months

ago, where one of the lead counsel there, where several lead counsel, but one of the lead counsel put in, by way of expenses, not only first class air fare, but he stayed only at the Four Seasons Hotel, wherever. And there were numerous Four Seasons Hotels spread out throughout the country, the cheapest of which, at least for the room that he wanted, was $600. In one case, went up to $1,400 when he felt that someone of his significance on the case had to have a full suite.

Regretfully, I had to, as a sanction part, eliminate his recovery of any expenses whatsoever. It wasn't a question of cutting it down, it was a question of having him pay for those expenses a hundred percent.

I know I'll never have that kind of problem with your distinguished firm, but I thought I would flag it for its in terrorem effect.

MR. KELLER: Thank you, your Honor.

Luckily, Monster is based in New York. We're in New York and travel should be limited.

THE COURT: There you go. There you go.

Well, the Labaton firm is very well known to its

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courts for the excellence of its representation. It seems to be clear that they, the plaintiffs here, as we need to focus on plaintiff's people, we focus on the lawyer, are precisely the type of plaintiffs that the Reform Act contemplates to be lead plaintiffs and they are represented by very able counsel. And it does not appear to be absolutely sure that you have received any objections or claims for inquiries as to how many co-counsel or anything like that?

MR. KELLER: That's correct.

THE COURT: That's correct.

MR. KELLER: That is correct.

THE COURT: All right. So that motion is granted.

The Middlesex County Retirement System and Steamship Trade Association International Longshoremen's Association Pension Fund plaintiffs' -- appointed as plaintiffs and Labaton firm is appointed as lead counsel.

Anything else that we need to take up today?

MR. KELLER: Nothing else.

MR. DeVORE: I think it is clear, but I want to make it clearer, that is the company may not answer -- need not answer the amended complaint.

THE COURT: Need not answer the --

MR. HOFFNER: The new complaint.

THE COURT: Under the Reform Act, not until the motion is heard.

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MR. HOFFNER: The company has already answered.

THE COURT: The company has already answered the -- I'm sorry. But they are not going to change it in any way.

But I think what you probably should do is -- I think you -- you probably -- after they file the amended complaint, you -- even though it won't change anything as to McEelvey -- I think you still have to file an answer to that amended complaint, yes.

MR. HOFFNER: Okay.

THE COURT: But you don't have to do that until

after -- even though the motion is only McEelvey's motion, you would have leave of this Court to wait until that motion is decided if you want to file your amended answer.

MR. HOFFNER: Thank you, your Honor.

THE COURT: All right.

Anything else?

MR. KELLER: Your Honor?

THE COURT: I'm sorry. Yes.

MR. KELLER: I just wanted to address that last point and make sure there is clarification and -- that the -- that there will be an answer.

THE COURT: Basically -- I mean I think we need to put the case on hold, Is my real point, until we have the amended complaint and the motion practice.

MR. KELLER: Okay.

THE COURT: I think that even -- as I interpret the intent of the Reform Act, that would be true even if it's only McEelvey that's involved now. But if you want to argue about that.

MR. KELLER: Well, we would have -- at the very least, we would have the option of making motion for summary relief from that provision, I think, if what we're referencing is --

THE COURT: Sure. Absolutely. And if you have a good reason -- for example, I can well imagine that you might think that the document deserves -- with respect to the company -- should go forward, even while that other issue -- depositions, I think you have a much harder road to hoe -- but maybe document, you might even be able to arrange that informally with your adversary, for all I know. But, sure, whenever you want to bring -- what we'll do, is we'll put the -- we'll stay the case in all respects other than the filing of the amended complaint and the motion practice that follows it without prejudice to your applying -- telephonically, I don't need to have a formal motion, just get your adversary on the phone, call my chambers to move forward in any particular respect that you think makes sense as to any party other than McEelvey. And my instinct is that on the document side, that probably makes sense. And on the deposition side, probably doesn't make sense. But just, you know, every situation is different.

Okay?

MR. KELLER: Okay. Thank you, your Honor.

THE COURT: All right, very good. Thanks very much.

ALL: Thank you, your Honor.

(Adjourned)

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